

Organisations - Fitness to Access Funds Notes to complete Form



Notes and Application Forms available in this series:



- ATF(1) – Request Account information ●
- ATF(2) - Access to Funds ●
- ATF(3) - Additional Joint Withdrawers ●
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Organisations - Fitness to Access Funds



GENERAL NOTES

The purpose of the attached form is to provide sufficient information to allow the Public Guardian to be satisfied that an organisation is fit and proper to intromit with the funds of an adult for the purpose of Part 3 of the Adults with Incapacity (Scotland) Act 2000. Intromit with funds is simply to access and use the funds for the benefit of the adult.

Throughout this form “organisation” is used to refer to any body such as a local authority, company, partnership, agency, etc howsoever constituted. The applicant organisation will be the organisation whose employees or volunteers will have access to an account opened for the purpose of intromitting with the funds of an adult.

If you are not sure if your organisation is an authorised establishment seek advice from the SCSWIS, Compass House, 11 Riverside Drive, Dundee, DD1 4NY, Tel 0845 6009527 or from the OPG, Tel No 01324 678300

If you are an authorised establishment which is eligible to manage funds under **Part 4 of the Adults with Incapacity (Scotland) Act 2000 - Management of Residents Finances** you are not eligible to make an application under Part 3 for access to funds.

Organisations should ensure they have a clear understanding of their roles and responsibilities and what is involved in accessing funds on behalf of an individual before making an application under the scheme. The Scottish Government code of practice for withdrawers provides clear guidance and by following the code it ensures best practice.

Local authorities have certain responsibilities in terms of the Adults with Incapacity legislation and should also refer to the Scottish Government code of practice for local authorities for further guidance. Codes of practice can be downloaded from the website: www.scotland.gov.uk/justice/incapacity/codes.asp or copies can be obtained by telephoning 0131 244 3581.

There is no fee for submission of the form. However, applications to access the funds of individual adults, and other processes, do attract fees. The appropriate cost is contained within the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2008 which can be obtained from the Public Guardian or from the website www.publicguardian-scotland.gov.uk

Once satisfied of an organisation's fitness to access adults' funds, the Public Guardian will retain the information on this form and the organisation will be issued with an organisation list number. There is no need to provide this information each time the organisation applies to access the funds of an individual adult but the organisation will be required to provide their organisation list number.

There is a requirement to notify this office of any material changes to that information which may affect the organisation's fitness to access funds. If any material changes are made to that information a new organisation list number will be issued.

The most current organisation list number must be shown on each application to access an adult's funds.

The Public Guardian will advise you in writing if you are required to submit further information to show that your organisation is fit and proper to intromit with the funds of an adult.

If you require any advice or assistance in completing any part of this form please feel free to contact staff at the OPG on 01324 678300.

The form must accompany the organisation's first application to access the funds of an adult.

Fit and Proper Person Test



CRITERIA

The Public Guardian must be satisfied as to an organisation's status as a fit and proper person to intromit with the adult's funds in terms of section 27D(1) of the Adults with Incapacity (Scotland) Act 2000.

To determine this, the Public Guardian will need to be satisfied that:

1. The applicant organisation is financially secure and that its financial practices assure the safekeeping of a vulnerable adult's funds;
2. Employees and volunteers who will have access to an adult's account(s) are suitable, competent and appropriately supervised; and
3. The applicant organisation has robust corporate governance mechanisms.
4. Relevant disclosure checks are carried out on employees and volunteers intromitting with the adults' accounts.

Disclosure checks are an essential requirement in satisfying the Public Guardian that the organisation is fit and proper to intromit with the funds of an adult.

OPERATIONAL EVIDENCE

To satisfy the Public Guardian on the above matters an organisation must be able to evidence the following:

1. Audited Accounts / Business Plan

An established organisation will need to have, available on request, two years of signed and audited accounts. A new organisation will need to have, available on request, a business plan which shows detailed financial projections, approved by an appropriate authority. If the relevant documents do not exist, the Public Guardian will make further enquiries to assess the financial security of the organisation. Failure to satisfy the Public Guardian of the organisation's robustness will result in the application being refused.

2. Management of Financial Complaints

The applicant organisation will be asked its history on relevant complaints and claims, for example, of theft or financial maladministration. If the organisation has received a relevant claim or complaint or if its regulatory body has made any recommendation to correct perceived poor practice in these areas, the Public Guardian will seek more information. The Public Guardian will need to be satisfied that the organisation has acted appropriately to address any matters. Failure to assure the Public Guardian of prudent management will result in the application being refused.

3. Management of Adults' Accounts

The Public Guardian will need to be satisfied that the applicant organisation manages adults' funds in a way that provides an auditable trail of the income and expenditure of an individual adult's funds. The following practices will be required:

- 3.1 The organisation will be required to maintain clear and current records of the transactions of the funds of each adult for whom the organisation holds a withdrawal certificate, detailing the source of income, the purpose, date and amount of expenditure and concluding with a current balance.

- 3.2 Supporting vouchers must be retained which evidence expenditure from the funds of each adult.
- 3.3 Any monies held as pooled cash must be attributable to individual adults.
- 3.4 The balance of any unspent personal allowance(s) held as pooled cash must be repaid to the individual adult in appropriate proportions.
- 3.5 Controls must exist to limit access to, and ensure safekeeping of, any bank books, debit cards, credit cards, cheque books, petty cash, etc held on behalf of adults' or managed in their home.
- 3.6 Relatives and other interested parties must be kept fully informed as to the nature of expenditure undertaken on behalf of the adult, for example, by issue of a quarterly statement.

Failure to satisfy the Public Guardian on the applicant organisation's compliance with any of the above matters will result in the application being refused.

4. Provision of a Financial Reference

The Public Guardian may seek a financial reference from the organisation's bankers to validate the applicant organisation's financial standing. The provision of a poor financial reference will result in the application being refused. The refusal of an applicant organisation to agree to a reference being sought or the refusal of a fundholder to provide a reference may result in an application being refused.

5. Robust Staffing Governance

The applicant organisation will be asked to describe its relevant employee management processes to satisfy the Public Guardian that any employees or volunteers who will have access to an adult's account(s) are:

- a) recruited and trained in such a way that they are both suitable and competent for this task; and
- b) supervised such that any maladministration of the funds, be this negligent or intentional, will be recognised and managed.

Failure to satisfy the Public Guardian that the organisation has sufficiently robust supervisory control will result in the application being refused.

6. Robust Corporate Governance

The applicant organisation should have in place mechanisms to:

- a) minimise the potential for maladministration of an adult's funds [negligent or intentional];
- b) allow early detection and management of any such malpractice; and
- c) reimburse any loss to the adult's funds in the event of maladministration.

The applicant organisation will be asked to confirm that it has in place the following policies:

- **Recruitment, Selection and Retention**
- **Induction and Training**
- **Staff Supervision and Appraisal**
- **Staff Discipline**
- **Staff Grievance**
- **Complaints**
- **Confidentiality**
- **Codes of Conduct**
- **Management of Client's Money**
- **Record Keeping**
- **Prevention and Detection of Financial Abuse**
- **Suspected Abuse (to include financial abuse)**
- **Whistle-blowing**

The Public Guardian may enquire about an organisation's practices in support of a policy. In the event that an applicant organisation does not have a written policy on a matter, the Public Guardian will enquire in detail as to the organisation's practices in this area. The Public Guardian must be satisfied that the applicant organisation has appropriate mechanisms in place to achieve the above objective. Failure to satisfy the Public Guardian of this will result in the application being refused.

7. Adequate Indemnity Insurance

The applicant organisation will be asked to confirm its insurance cover, type and level, to satisfy the Public Guardian that the applicant organisation is indemnified against maladministration of adults' funds whether negligently or intentionally. Failure to hold appropriate insurance will result in the application being refused.

Office of the Public Guardian (Scotland)
Hadrian House
Callendar Business Park
Callendar Road
FALKIRK, FK1 1XR

DX: 550360 Falkirk 3
LP: LP-17 Falkirk

- Telephone: 01324 678300
- Fax: 01324 678301
- Email: opg@scotcourts.gov.uk
- Website: www.publicguardian-scotland.gov.uk

The office of the Public Guardian (OPG) is open to the public from 9am to 5pm, Monday to Friday.

This leaflet is available free of charge in Braille, audiotape large print format, and various non-English languages by phoning the above telephone number. The OPG subscribes to Language Line and the RNID Typetalk service.



FITNESS TO ACCESS FUNDS FORM

FOR COMPLETION BY ORGANISATIONS WHOSE EMPLOYEES OR VOLUNTEERS WILL INTROMIT OR ACCESS AND DEAL WITH THE FUNDS OF AN ADULT FOR THE PURPOSES OF PART THREE OF THE ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Section 1 - Corporate Governance

Section 1.1 - Applicant Organisation

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Section 1.2 - Address of Organisation

It is the responsibility of the applicant organisation to inform the OPG of any change to the contact details.

Number:	
Street:	
Locality:	
City:	
County:	
Country:	
Post Code:	
Tel:	
Email Address:	

Section 1.3 - Registered Headquarters

Complete where these are different from section 1.2

Number:	
Street:	
Locality:	
City:	
County:	
Country:	
Post Code:	
Tel:	
E-Mail Address:	

Section 1.4 - Senior Officer's Contact Details

Please provide details of the senior office holder within the organisation, namely director, partner, or other senior officer who will be accountable for this element of business. This person should provide a specimen signature below and also sign the declaration at section 6.

Title of Office or Post in Organisation:	
Name of current holder:	
Specimen Signature:	

Work Contact Address:

Number:	
Street:	
Locality:	
City:	
County:	
Country:	
Post Code:	
Tel:	
Email Address:	

Section 1.5 - Constitution

Please identify below how the organisation is constituted legally.
More than one box may be ticked if appropriate.

Local Authority		Public Limited Company	
Local / Central Government Agency		Private Limited Company	
Voluntary Organisation		Incorporated Association	
Charity		Unincorporated Association	
Public Sector Care Provider		Sole Trader	
Private Care Provider		Partnership	
Other (please specify)			

Please identify below the supporting documents that you hold in recognition of your constitution, for example, Memorandum of Association, Certificate of Incorporation or Constitution, Articles or Rules of Association, Partnership Agreement, Trust Deed, etc)

The OPG may ask to see copies of any of the above documents.

Section 1.6 - Monitoring

Please identify the supervisory/regulatory bodies which carry out external or independent monitoring of your organisation or any service provided by you.

Social Care & Social Work Improvement Scotland (SCSWIS)	
Local Authority (where the applicant is not the local authority)	
Office of the Scottish Charity Regulator	
Financial Services Authority	
Companies House	
Audit Scotland	
Communities Scotland	
Other (please specify)	

The OPG may ask to see copies of relevant documentation from the above bodies.

Section 1.7 - Supervisory/Regulatory Body's Details

For each of the bodies identified at section 1.6 please provide details of the contact person, where known, together with any relevant identification number, for example, Company Registration, Charity Number, Care Commission registration number etc.

Name of Supervisory/Regulatory Body:	
Contact Name (If Known):	
Designation:	
Tel No:	
Organisation's Identification Number:	

Contact Address of Body:

Number:	
Street:	
Locality:	
City:	
County:	
Country:	
Post Code:	
Tel:	
Email Address:	

Name of Supervisory/Regulatory Body:	
Contact Name (If Known):	
Designation:	
Tel No:	
Organisation's Identification Number:	

Contact Address of Body:

Number:	
Street:	
Locality:	
City:	
County:	
Country:	
Post Code:	
Tel:	
Email Address:	

Continue on separate page if necessary.

Section 1.8 - Accounts (Except for Local Authorities)

For established organisations: Does your organisation have signed audited accounts for the last two financial years?

The OPG may ask to see copies of any of the above documents.

For new organisations: If you are a new organisation for which no recent accounts are available, you may be required to submit a business plan. The plan should include detailed financial projections and must be approved by a bank, institutional lender or independent person holding an appropriate qualification.

Does your organisation have such a business plan?

The Office of the Public Guardian may ask to see, or have provided copies of any of the above documents.

Section 1.9 - Insolvency (Except for Local Authorities)

Where the organisation or any of its senior office bearers or any organisation whose management they have been involved, in an executive or non executive capacity, has been the subject of any insolvency process or proceedings such as sequestration, receivership, liquidation, winding up, protected trust deed arrangement, etc, details must be provided in the box below.

Section 1.10 - Financial Reference (Except for Local Authorities)

A statement from the organisation’s bank or financial institution may be required to evidence financial standing. Please complete the following information and the authority to release information.

Name of Bank or other Financial Institution:	
Branch Name:	
Number:	
Street:	
Locality:	
City:	
County:	
Country:	
Post Code:	
Sort Code:	
Account Names/Titles:	

AUTHORITY

Dear Sir/Madam

I hereby authorise you to provide to the Office of the Public Guardian any information that they may require as to the suitability of this organisation to act as a withdrawer pursuant to Part 3 of the Adults with Incapacity (Scotland) Act 2000.

This organisation will be liable for any fee payable for this service.

Yours faithfully

Name:

Position in organisation:

Signature:

Date:

On behalf of
(Name of organisation)

Section 1.11 - Insurers Details

The OPG needs to be satisfied that the organisation is indemnified against maladministration of clients' funds whether negligently or intentionally.

Please provide the details of your Insurer:

Name of Insurer:	
Number:	
Street:	
Locality:	
City:	
County:	
Country:	
Post Code:	
Tel:	
Email Address:	

Section 1.12 - Policy Details

Number:	
Date of Expiry:	

Section 1.13 - Cover

Please identify the type of cover provided and the maximum financial indemnity level.

Type of Cover	Maximum Level of Cover (£)

You may be asked to provide written confirmation from your insurance company to support the information provided above.

Section 2 – Risk

Section 2.1 - Risk Management

Within the last 3 years, has the organisation been in receipt of any legal claims or dealt with any external or internal complaints of theft or financial maladministration?

If yes, please provide details below, including any action taken.

Has your regulatory body ever required you to amend practice in relation to financial maladministration or other related financial issues?

If yes, please provide details below, including any action taken.

You may be asked to provide documentary evidence in support of the above narrative.

You are obliged to notify the OPG of:

- **any future legal claims or your dealings with any external or internal complaints of theft or financial maladministration; and**
- **any requirements by your regulatory body to amend practice relevant to financial maladministration or related financial issues,**

which may arise and affect your organisation's status as a fit and proper person under section 27D(1) of the Adults with Incapacity (Scotland) Act 2000.

Section 4 – Fund Management

Section 4.1 - Management of an Adult's Funds

Section 26(1) of the legislation is to the effect that an applicant must:

- state the purposes of proposed intromissions with the adult's funds;
- specify an account held by a fundholder in the adult's sole name which basically will feed a designated account opened by the applicant organisation; and
- provide an undertaking that the applicant organisation will open an account (the designated account) solely for the purposes of receiving the adult's funds as specified in the certificate of authority and intromitting with same.

Section 4.2 - Designated Account

A designated account will require to be opened in respect of each individual adult so that funds are held separately from other adult's funds and separately from corporate funds and so that a separate and complete set of bank statements can be available for each individual adult. You will require to ensure that:

- Supporting vouchers are retained which evidence expenditure from the funds of each adult;
- Any monies held as pooled cash must be attributable to individual adults;
- The balance of any unspent personal allowance(s) held as pooled cash must be repaid to the individual adult in appropriate proportions;
- Controls must exist to limit access to, and ensure safekeeping of, any bank books, debit cards, credit cards, cheque books or petty cash, etc. held on behalf of adults' or managed in their home;
- Where possible, relatives and other interested parties must be kept fully informed as to the nature of expenditure undertaken on behalf of the adult, for example, by issue of a quarterly statement; and
- The organisation will be required to maintain clear and current records of the intromissions of the funds of each adult for whom the organisation holds a withdrawal certificate narrating the source of income, the purpose, date and amount of expenditure and concluding with a current balance.

Section 6 – Declaration

I certify that all statements given in this form are true and correct to the best of my knowledge. I acknowledge that false or misleading information may lead to the Public Guardian finding that the organisation is not a fit and proper person for the purposes of Part 3 of the Adults with Incapacity (Scotland) Act 2000 and to the refusal of an application for a withdrawal certificate or the termination of any existing withdrawal certificate.

I acknowledge that it is the responsibility of my organisation to notify the OPG directly and immediately of:

- any change to the information provided in this form;
- any claims or complaints of theft, financial maladministration or related financial issues; and/or
- any recommendations by a regulatory body to correct perceived poor practice relevant to financial maladministration or related financial issues,

which may affect our status as fit and proper persons for the purposes of Part 3 of the Adults with Incapacity (Scotland) Act 2000.

I can verify that the policies referred to in section 5 are actively implemented by our organisation. The OPG is authorised to seek copies of these, or further information in relation to the operation of these, if required.

I hereby confirm that the OPG is authorised to contact appropriate bodies as it sees fit in order to seek such information as it considers reasonable in the pursuance of this application. The OPG will retain and process the information provided herein on computer. This processing is necessary for the exercise of the statutory functions conferred on the Public Guardian by the Adults with Incapacity (Scotland) Act 2000. By signing below I understand that I consent to this information being processed, stored and used by the OPG in the discharge of its function.

Signature of Senior Officer:

Print Name:

Designation:

Date: